IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

RPFC.No. 107 of 2003()

MC.448/1994 of FAMILY COURT, KOZHIKODE

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REVISION PETITIONER/PETITIONER

DEVI D/O. CHATHU,
NAMATH, P.O.PARAKKADAVU,
VADAKARA.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: RESPONDENT

NANU S/O. CHATHU, CHERIYA VALAPPIL,
P.O.PARAKKADAVU, VIA.NADAPURAM,
VADAKARA TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.SUNNY MATHEW
BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 24/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

R.P.(FC).No.107 of 2003

Dated this the 24th day of October, 2007

O R D E R

The revision petitioner had filed M.C.No.448/94 in the Family Court, Kozhikode under Section 125 Crl.P.C. which stands dismissed.

2. It is the case of the revision petitioner that she was married to the respondent on 17.8.1994 and they were residing as husband and wife and a child was born on 17.10.1975. It is her case that in the mean time when she was pregnant the respondent developed intimacy with one Indira and that she was living with him as a concubine and subsequently Indira was brought to his house and he has got three children in the above Indira. The respondent has not paid any amount for the maintenance of herself and the minor child. The child/daughter was married away on 9.2.1994. Now, the petitioner is not having sufficient health and hence the proceedings initiated. It is alleged that he is having a monthly income of Rs.12,500/- per month. On the other hand, the respondent has denied the

alleged matrimony and paternity. He has alleged that she is a woman of loose morals. It is also alleged that there was a civil case between the respondent's relatives and Kanhirakandi Chathu who is the neighbour of the petitioner and who has illicit relationship with her. In civil disputes between the respondent and Chathu, Chathu had deposited a sum of Rs.6,800/- as costs.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 3, Exts. A1 to A3, RW1 and Exts. B1 to B12.

4. It was found that the evidence of PWs' 1 and 3 i.e., the petitioner and her father respectively as to the marriage performed is not sufficiently convincing as even the date of marriage could not be mentioned either by PW1 or PW3. PW2, the lady witness to the marriage is only 32 years old. Evidently, at the time of alleged marriage PW2 would have only aged 12 years. The only connecting link that could be found is Ext. A1 birth certificate of the daughter of the petitioner wherein the name of the respondent is mentioned as the father of the child.

5. On the other hand, the respondent has produced Ext. B1 extract of school admission register wherein his name is not

mentioned and the name of the mother alone is mentioned. Exts. B3 to B12 are the ration card, voters list, birth certificate of his children and family photographs of the revision petitioner and his wife and that of the family etc. The above documents were produced to show that he has married to the other lady and leading a family life. Ext. B2 is the delivery account issued from the Nadapuram Munsiff Court with respect to the litigation between Chathu and the father of the respondent.

6. The counsel for the revision petitioner has relied on the decision reported in **Sreedharan vs. Pushpa Bai (1978 KLT 26)** and **Selvaraj vs. Jayakumary (2000 (3) KLT 519)** wherein this court has held that the standard of proof of a marriage in a proceedings under Section 125 Crl.P.C. is not so high as required in other proceedings. According to the counsel for the revision petitioner once a prima-facie case is established the burden shifts to the respondent. I am not in a position to agree with the above proposition. As held by the Family Court, the evidence adduced is hardly sufficient to hold that the respondent had married the petitioner and she has given birth to a child from the respondent. In the circumstances, I find that

there is no reason to disturb the findings of the Family Court in the matter.

7. Counsel for the revision petitioner has sought for an observation that in case the revision petitioner wants to initiate any other proceedings this order may not be a bar. The petitioner will be at liberty to initiate whatever proceedings she desires and the implications of this order will be confined to the legally permissible limits.

The revision petition is dismissed.

K.R.UDAYABHANU,
JUDGE

csl